IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3998 OF 2001

Taherali Fazal Ali — Petitioner

versus

Hidayatulla Yusufkhan Patel,
since deceased through LRs. — Respondents

K.V.Mandlik, adv. for petitioner.

A.V.Anturkar, adv. for R-2, 1-a, 1-b, 3-a to 3-c.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 17th December 2004

PC :

1. Heard Mr.Mandlik for petitioner and Mr.Anturkar for respondents 1a, 1b, 2, 3a to 3c. The writ petition challenges an order passed by the Extra Joint District Judge, Pune in Civil Revision Application No.47 of 1994 quashing and setting aside the order of the Trial Court and remanding the matter for fixation of standard rent.

2. Mr.Mandalik, learned counsel for petitioner submits that he is aggrieved only by that part of order of Revisional Court where the claim of the

tenancy in respect of shop no.1 has been rejected. In the submission of Mr.Mandalik, if the order of Trial Court is set aside and matter is remitted back in it's entirety, then the Revisional Court ought not to have pronounced upon claim of tenancy in respect of one shop. In his submission the entire matter is before Trial Court and therefore, the claims in respect of both shops ought to have left to be decided by the Trial Court.

3. Mr.Anturkar, on the other hand, submits that this is a finding of fact rendered by the Trial Court which the Revisional Court has confirmed. This Court should not exercise it's jurisdiction under Article 227 of the Constitution of India.

4. Heard learned counsel appearing for parties, perused the impugned judgement. It is clear that the Revisional Court has affirmed the finding of Trial Court in respect of shop no.1. However, while doing so, the Revisional Court has not considered the effect of several documents and more particularly those referred to in para 5 of the petition, and the clauses in the agreement in question. Since the matter was to be remitted back to the Trial Court, the Revisional Court

ought to have, in the interest of justice and fairness, granted an opportunity to the petitioner to prove his claim of tenancy in respect of both shops.

5. In the result, the order of Revisional Court is maintained but with a modification that the Trial Court shall consider the claim of tenancy in respect of both shops while fixing standard rent. The Trial Court shall make an endeavour to decide the Miscellaneous Application No.208 of 1989 as expeditiously as possible and in any event within a period of three months from today. Contentions on merit are expressly kept open. It is clarified that this order is without prejudice to the rights and contentions of respondents to raise all pleas as well as initiate such proceedings as are permissible in law. Petition is disposed of accordingly.

(S.C.DHARMADHIKARI, J.)